



# Department of Justice

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**STATEMENT**

**OF**

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**BEFORE THE**

**SUBCOMMITTEE ON AVIATION  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
U.S. HOUSE OF REPRESENTATIVES**

**CONCERNING**

**CELL PHONES ON AIRCRAFT: NUISANCE OR NECESSITY**

**PRESENTED ON**

**JULY 14, 2005**

**Statement  
of  
Laura H. Parsky  
Deputy Assistant Attorney General, Criminal Division  
United States Department of Justice  
Before the  
Subcommittee on Aviation  
Committee on Transportation and Infrastructure  
United States House of Representatives  
Concerning  
Cell Phones on Aircraft: Nuisance or Necessity  
Presented On  
July 14, 2005**

**I. INTRODUCTION**

Good morning, Mr. Chairman, Ranking Member Costello, and Members of the Subcommittee. I appreciate the opportunity to join you today to discuss the use of cell phones on aircraft and some of the attendant – and critical -- law enforcement, public safety, and national security issues we hope will be considered carefully. The Department of Justice appreciates this Subcommittee's leadership in examining these issues.

As we all are aware, the "high-tech" age in which we now live is offering, and will continue to offer, tremendous opportunities and efficiencies in communications technology. The use of wireless telecommunications services, in particular, has proliferated in recent years. The Department of Justice recognizes that the ability to use wireless telephones in flight would offer the public tremendous convenience and flexibility. Further, the ability to enhance communications on board aircraft could

significantly increase the capabilities of public safety and homeland security personnel who protect our citizens on those aircraft. To the extent that the availability of commercial in-flight communications services could be utilized by law enforcement and security personnel, such services would certainly benefit national security and public safety.

However, it is an unfortunate reality that despite the tremendous benefits new technologies bring to our society, there are always some who will misuse these technologies for criminal, and sometimes lethal, purposes. It is, of course, no secret that today's terrorists and criminals use cell phones, among other communications devices, to coordinate their illicit activities. The ability to use cell phones for this purpose in the air adds another dimension to terrorists' coordination efforts. If air-to-ground communications service were made available without consideration of public safety and national security, terrorists and other criminals could use such a service to coordinate hijackings or other attacks. They could potentially coordinate by cell phone between a terrorist on an aircraft and an accomplice on the ground, among hijackers located in different sections of the cabin of the same aircraft, or even among attackers traveling on different aircraft.

Because of the realities of today's world, we believe that, if in-flight cell phone use is to be allowed, reasonable steps can and should be taken to minimize risks to our national security and public safety. This hearing is being held as the Federal Communications Commission (FCC) is in the midst of a rulemaking proceeding in which it is considering whether to modify, relax, or remove its current ban on the in-flight use of passenger-owned cell phones. The Department of Justice, joined by the Department of

Homeland Security, has submitted comments on the FCC's proposal. I refer you to those comments for a full discussion of our position; however, I would like to share with you a few of the measures that we believe would make this service safer for all concerned.

## **II. CALEA IN AN AIR-TO-GROUND COMMUNICATIONS CONTEXT**

First, as discussed above, unfortunately we can anticipate that criminals and potentially terrorists will attempt to misuse cell phones onboard aircraft to facilitate their unlawful activities. In such instances, lawfully authorized electronic surveillance is an invaluable and necessary tool for federal, state, and local law enforcement to protect national security and public safety. The Communications Assistance for Law Enforcement Act (CALEA) maintains law enforcement's ability to conduct court-ordered electronic surveillance despite changing telecommunications technologies by requiring telecommunications carriers, including cellular and other wireless carriers, to build into their technologies the capabilities necessary to allow law enforcement to implement court orders for electronic surveillance.

Although CALEA would apply to cellular and other wireless carriers in the context of air-to-ground communications, the Department of Justice has asked the FCC to ensure that CALEA would remain effective in emergency situations onboard aircraft in-flight. For instance, CALEA itself does not prescribe a timeframe within which an intercept order must be provisioned by a provider, and the FCC has previously stated only that carriers should "promptly" provision such orders. Given the nature of both air travel and air-to-ground communications, any historical, terrestrially-based interpretation of the term "promptly" will not be adequate in the air-to-ground context. Therefore, the Department of Justice has asked that, in the context of an air-to-ground interception, the

FCC define “promptly” as “forthwith, but in no circumstance more than 10 minutes” from the moment of notification to the telecommunications carrier of lawful authority to conduct electronic surveillance to the moment of real-time transmission to law enforcement or other authorized government agents.

There is typically a short window of opportunity within which action can be taken to thwart a terrorist hijacking or remedy other crisis situations onboard an aircraft. As documented in the 9/11 Commission Report, for three of the flights that were hijacked by terrorists on September 11, 2001, the amount of time that elapsed between the determination that each airplane had been hijacked and when each airplane crashed ranged from 12 to 27 minutes. Law enforcement needs to be able to maximize its ability to respond to these potentially lethal situations, and having the ability immediately to conduct electronic surveillance is critical in the air-to-ground context where every moment matters.

### **III. NON-CALEA OPERATIONAL CAPABILITIES**

The uniqueness of service to and from an aircraft presents the possibility that terrorists and other criminals could use air-to-ground communications systems to coordinate a hijacking or other attack. For example, the use of cell phones in flight could potentially facilitate a coordinated attack between a person on the aircraft and a person on the ground, persons traveling on different aircraft, and/or persons traveling on the same aircraft located in different sections of the cabin, who could communicate with one another using their personal cell phones.

While the capabilities mandated by CALEA provide invaluable assistance to law enforcement, there are certain additional, but critical, capabilities that are not provided

for by CALEA. Unlike on the ground, in the event of a hostage situation or bombing threat in flight, law enforcement cannot physically surround and penetrate an aircraft moving hundreds of miles per hour through the air. In such situations, obtaining knowledge about onboard communications and maintaining and exercising control over those communications become critically important for law enforcement and can influence time-sensitive decisions about how to respond to the threat.

Therefore, in order to maximize law enforcement's efficacy, the Department of Justice and Department of Homeland Security have requested that, if the FCC allows air-to-ground cell phone service, it require certain operational capabilities for such service. These additional capabilities include, for instance, the ability expeditiously to:

- (1) Provide the seat number or general location of onboard cell phone users;
- (2) Interrupt, redirect, and/or terminate cell phone calls;
- (3) Identify the destination of all communications originated from wireless phones on such an aircraft; and
- (4) Identify the origin of communications directed or terminated to wireless phones located on that aircraft.

#### **IV. POSSIBLE INCREASED RISK OF THE USE OF RADIO-CONTROLLED IMPROVISED EXPLOSIVE DEVICES AS A RESULT OF CONNECTIVITY TO AIRCRAFT**

Another area of concern for law enforcement, public safety, and national security is the risk that a terrorist could use a communications device as a remote-controlled improvised explosive device (RCIED). Although we recognize that the potential for terrorists to do this already exists, the risk of RCIED use may, at least in theory, be

increased as a result of the ability of aircraft passengers now to use effectively personal cell phones in flight. The ability to turn on a wireless phone located onboard an aircraft and have that phone connect to wireless service or reach a communications carrier's network — which was not previously possible in a reliable way — presents the potential that either a passenger or someone on the ground could *reliably* remotely activate a wireless phone or device in-flight and use it as an RCIED.

Clearly, the greatest impediment to the use of wireless phones and similar communications devices as RCIEDs is to prevent them from being brought onboard aircraft in the first place. Although advanced screening techniques are in place to assist in that mission, those techniques are not absolute. Therefore, we have asked that the FCC and carriers consider ways to mitigate this potential increased risk, including:

- (1) A user network authentication and seat-registration requirement for in-flight use of personal cell phones;
- (2) Strong network security controls for communications equipment onboard aircraft; and
- (3) Design mechanisms that will deny network access and connectivity to devices stored in the cargo hold.

## **V. WIRELESS IN-FLIGHT SERVICE AND ITS POTENTIAL IMPACT ON PASSENGER CONDUCT**

In recent months, there has been significant media attention given to the effect that in-flight wireless phone use will have on the overall atmosphere of flights and the conduct of passengers. In particular, we note the concerns expressed by flight attendants, pilots, and other members of the flying public that the unrestricted use of cell

phones by multiple passengers on flights could result in an increase in “air rage” incidents.

The Department of Justice is concerned that the conduct of passengers making use of personal cell phones in flight could have implications for federal law enforcement onboard aircraft whose mission and status is unknown to fellow passengers. We believe that affirmative measures should be adopted to diminish the probability that law enforcement’s onboard mission will either be complicated or compromised unnecessarily by disputes concerning in-flight cell phone use. For this reason, we have recommended that the FCC, in consultation with the airlines, establish rules and/or policies concerning in-flight personal wireless phone use to minimize any potential for the increase in air rage incidents that could result from their unrestricted use.

## **VI. CONCLUSION**

Mr. Chairman and Members of the Subcommittee, thank you again for the opportunity to testify today and for your attention to the important national security, law enforcement, and public safety issues related to the use of cell phones in flight. We look forward to working with you and the FCC to address these issues going forward. At this time, I’d be happy to answer any questions you may have.